§ 390.60

- (2) If received as a separate document, the certification may be incorporated into a shipping document corresponding to the loaded container or trailer.
- (3) The person who converts a certification into an electronic format and/or incorporates a certification into a shipping document corresponding to the loaded container or trailer shall state in writing that the conversion and/or incorporation was performed accurately. Such statement shall take the following form: "Electronic Format and/or Incorporation by John Doe, X Company, Month/Day/Year." Such statement shall appear immediately after the certification of the person tendering the loaded container or trailer.
- (b) The certification may be forwarded by electronic transmission provided that all subsequent motor carriers receive the certification in a tangible form.
- (c) The forwarding of any certification required or statement authorized by this section does not constitute a verification or affirmation of the accuracy or completeness of the certification or statement.
- (d) Any person who tenders a loaded container or trailer that is transported by a motor carrier, and each motor carrier transporting a loaded container or trailer shall maintain a copy of the certification for a period of one year from the date of the tendering. Certifications may be maintained electronically if the certification can be reproduced in a tangible form.

§390.60 Coercion.

- (a) No person may coerce or attempt to coerce a person to transport a loaded container or trailer subject to this subpart without the certification required by §390.54.
- (b) No person, knowing that the weight of a tractor-trailer combination which includes a loaded container or trailer is in excess of that permitted by applicable State law, may coerce or attempt to coerce a motor carrier or driver in violation of such law—
- (1) To transport the loaded container or trailer; or
- (2) To operate the tractor-trailer combination.

(c) Exception. This section does not apply to a carrier transferring a loaded container or trailer to another carrier in the course of intermodal transportation. This exception does not apply if the transferring carrier is also the person tendering the loaded container or trailer.

PART 391—QUALIFICATIONS OF DRIVERS

Subpart A—General

Sec.

- 391.1 Scope of the rules in this part; additional qualifications; duties of carrier-drivers.
- 391.2 General exemptions.

Subpart B—Qualification and Disqualification of Drivers

- 391.11 Qualifications of drivers.
- 391.15 Disqualification of drivers.

Subpart C—Background and Character

- 391.21 Application for employment.
- 391.23 Investigation and inquiries.
- 391.25 Annual review of driving record.391.27 Record of violations.

Subpart D—Tests

- 391.31 Road test.
- 391.33 Equivalent of road test.

Subpart E—Physical Qualifications and Examinations

- 391.41 Physical qualifications for drivers.
- 391.43 Medical examination; certificate of physical examination.
- 391.45 Persons who must be medically examined and certified.
- 391.47 Resolution of conflicts of medical evaluation.
- 391.49 Waiver of certain physical defects.

Subpart F-Files and Records

391.51 Driver qualification files.

Subpart G—Limited Exemptions

- 391.61 Drivers who were regularly employed before January 1, 1971.
- 391.62 Limited exemptions for intra-city zone drivers.
- 391.63 Intermittent, casual, or occasional drivers.
- 391.64 Grandfathering for certain drivers participating in vision and diabetes waiver study programs.

- 391.65 Drivers furnished by other motor carriers
- 391.67 Farm vehicle drivers of articulated commercial motor vehicles.
- 391.68 Private motor carrier of passengers (nonbusiness).
- 391.69 Drivers operating in Hawaii. 391.71 Intrastate drivers of commercial motor vehicles transporting Class 3 combustible liquids.
- 391.73 Private motor carrier of passengers (business).

Subpart H—Controlled Substances Testing

- 391.81 Purpose and scope.
- 391.83 Applicability.
- 391.85 Definitions.
- Notification of test results and rec-391.87 ordkeeping.
- 391.89 Access to individual test results or test findings.
- 391.93 Implementation schedule.
- 391.95 Drug use prohibitions.
- 391.97 Prescribed drugs.
- 391.99 Reasonable cause testing require-
- 391.101 Reasonable cause testing procedures. 391.103 Pre-employment testing require-
- ments.
- 391.105 Biennial testing requirements.
- 391.107 Pre-employment and Biennial testing procedures.
- 391.109 Random testing requirements.
- 391.111 Random testing procedures.
- 391.113 Post-accident testing requirements.
- 391.115 Post-accident testing procedures.
- 391.117 Disqualification.
- 391.119 Employee Assistance Program (EAP).
- 391.121 EAP training program.
- 391.123 After-care monitoring.
- 391.125 Termination schedule of this sub-

AUTHORITY: 49 U.S.C. 504, 31133, 31136, and 31502; and 49 CFR 1.48.

SOURCE: 35 FR 6460, Apr. 22, 1970, unless otherwise noted.

Subpart A—General

§391.1 Scope of the rules in this part; additional qualifications; duties of carrier-drivers.

- (a) The rules in this part establish minimum qualifications for persons who drive commercial motor vehicles as, for, or on behalf of motor carriers. The rules in this part also establish minimum duties of motor carriers with respect to the qualifications of their drivers.
- (b) A motor carrier who employs himself/herself as a driver must comply

with both the rules in this part that apply to motor carriers and the rules in this part that apply to drivers.

[35 FR 6460, Apr. 22, 1970, as amended at 53 FR 18057, May 19, 1988; 60 FR 38744, July 28,

§ 391.2 General exemptions.

- (a) Farm custom operation. The rules in this part do not apply to a driver who drives a commercial motor vehicle controlled and operated by a person engaged in custom-harvesting operations, if the commercial motor vehicle is used
- (1) Transport farm machinery, supplies, or both, to or from a farm for custom-harvesting operations on a farm: or
- (2) Transport custom-harvested crops to storage or market.
- (b) Apiarian industries. The rules in this part do not apply to a driver who is operating a commercial motor vehicle controlled and operated by a beekeeper engaged in the seasonal transportation of bees.
- (c) Certain farm vehicle drivers. The rules in this part do not apply to a farm vehicle driver except a farm vehicle driver who drives an articulated (combination) commercial motor vehicle, as defined in §390.5. (For limited exemptions for farm vehicle drivers of articulated commercial motor vehicles, see § 391.67.)

[36 FR 24219, Dec. 22, 1971, as amended at 37 FR 26112, Dec. 8, 1972; 54 FR 12202, Mar. 24, 1989; 60 FR 38745, July 28, 1995; 61 FR 13346, Mar. 26, 1996; 61 FR 17253, Apr. 19, 1996]

Subpart B—Qualification and **Disqualification of Drivers**

§391.11 Qualifications of drivers.

- (a) A person shall not drive a commercial motor vehicle unless he/she is qualified to drive a commercial motor vehicle. Except as provided in §391.63, a motor carrier shall not require or permit a person to drive a commercial motor vehicle unless that person is qualified to drive a commercial motor
- (b) Except as provided in subpart G of this part, a person is qualified to drive a commercial motor vehicle if he/she-
 - (1) Is at least 21 years old;

- (2) Can read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records;
- (3) Can, by reason of experience, training, or both, safely operate the type of commercial motor vehicle he/she drives;
- (4) Can, by reason of experience, training, or both, determine whether the cargo he/she transports (including baggage in a passenger-carrying commercial motor vehicle) has been properly located, distributed, and secured in or on the commercial motor vehicle he/she drives;
- (5) Is familiar with methods and procedures for securing cargo in or on the commercial motor vehicle he/she drives.
- (6) Is physically qualified to drive a commercial motor vehicle in accordance with subpart E—Physical Qualifications and Examinations of part 391;
- (7) Has a currently valid commercial motor vehicle operator's license issued only from one State or jurisdiction;
- (8) Has prepared and furnished the motor carrier that employs him/her with the list of violations or the certificate as required by § 391.27;
- (9) Is not disqualified to drive a commercial motor vehicle under the rules in § 391.15;
- (10) Has successfully completed a driver's road test and has been issued a certificate of driver's road test in accordance with §391.31, or has presented an operator's license or a certificate of road test which the motor carrier that employs him/her has accepted as equivalent to a road test in accordance with §391.33;
- (11) Has completed and furnished the motor carrier that employs him/her with an application for employment in accordance with § 391.21.
- [35 FR 6460, Apr. 22, 1970, as amended at 35 FR 17420, Nov. 13, 1970; 35 FR 19181, Dec. 18, 1970; 36 FR 222, Jan. 7, 1971, 36 FR 24220, Dec. 22, 1971; 45 FR 46424, July 10, 1980; 52 FR 20589, June 1, 1987; 59 FR 60323, Nov. 23, 1994; 60 FR 38744, 38745, July 28, 1995]

§391.15 Disqualification of drivers.

- (a) General. A driver who is disqualified shall not drive a commercial motor vehicle. A motor carrier shall not require or permit a driver who is disqualified to drive a commercial motor vehicle.
- (b) Disqualification for loss of driving privileges. A driver is disqualified for the duration of his/her loss of his/her privilege to operate a commercial motor vehicle on public highways, either temporarily or permanently, by reason of the revocation, suspension, withdrawal, or denial of an operator's license, permit, or privilege, until that operator's license, permit, or privilege is restored by the authority that revoked, suspended, withdrew, or denied it.
- (c) Disqualification for criminal and other offenses— (1) General rule. A driver who is convicted of (or forfeits bond or collateral upon a charge of) a disqualifying offense specified in paragraph (c)(2) of this section is disqualified for the period of time specified in paragraph (c)(3) of this section, if—
- (i) The offense was committed during on-duty time as defined in §395.2(a) of this subchapter or as otherwise specified; and
- (ii) The driver is employed by a motor carrier or is engaged in activities that are in furtherance of a commercial enterprise in interstate, intrastate, or foreign commerce;
- (2) Disqualifying offenses. The following offenses are disqualifying offenses:
- (i) Driving a commercial motor vehicle while under the influence of alcohol. This shall include:
- (A) Driving a commercial motor vehicle while the person's alcohol concentration is 0.04 percent or more;
- (B) Driving under the influence of alcohol, as prescribed by State law; or
- (C) Refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of §391.15(c)(2)(i) (A) or (B), or §392.5(a)(2).
- (ii) Driving a commercial motor vehicle under the influence of a Schedule I drug or other substance identified in

appendix D to this subchapter ¹, an amphetamine, a narcotic drug, a formulation of an amphetamine or a derivative of a narcotic drug;

- (iii) Transportation, possession, or unlawful use of a Schedule I drug or other substance identified in appendix D of this subchapter ¹, amphetamines, narcotic drugs, formulations of an amphetamine, or derivatives of narcotic drugs while on on-duty time;
- (iv) Leaving the scene of an accident while operating a commercial motor vehicle; or
- (v) A felony involving the use of a commercial motor vehicle.
- (3) Duration of disqualification—(i) First offenders. A driver is disqualified for 1 year after the date of conviction or forfeiture of bond or collateral if, during the 3 years preceding that date, the driver was not convicted of, or did not forfeit bond or collateral upon a charge of an offense that would disqualify the driver under the rules of this section. Exemption. The period of disqualification is 6 months if the conviction or forfeiture of bond or collateral soley concerned the transportation or possession of substances named in paragraph (c)(2)(iii) of this section.
- (ii) Subsequent offenders. A driver is disqualified for 3 years after the date of his/her conviction or forfeiture of bond or collateral if, during the 3 years preceding that date, he/she was convicted of, or forfeited bond or collateral upon a charge of, an offense that would disqualify him/her under the rules in this section
- (d) Disqualification for violation of outof-service orders—(1) General rule. A driver who is convicted of violating an out-of-service order is disqualified for the period of time specified in paragraph (d)(2) of this section.
- (2) Duration of disqualification for violation of out-of-service orders—(i) First violation. A driver is disqualified for not less than 90 days nor more than one

year if the driver is convicted of a first violation of an out-of-service order.

- (ii) Second violation. A driver is disqualified for not less than one year nor more than five years if, during any 10-year period, the driver is convicted of two violations of out-of-service orders in separate incidents.
- (iii) Third or subsequent violation. A driver is disqualified for not less than three years nor more than five years if, during any 10-year period, the driver is convicted of three or more violations of out-of-service orders in separate incidents.
- (iv) Special rule for hazardous materials and passenger offenses. A driver is disqualified for a period of not less than 180 days nor more than two years if the driver is convicted of a first violation of an out-of-service order while transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act U.S.C. 5101 et seq.), or while operating commercial motor vehicles designed to transport more than 15 passengers, including the driver. A driver is disqualified for a period of not less than three years nor more than five years if, during any 10-year period, the driver is convicted of any subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act, or while operating commercial motor vehicles designed to transport more than 15 passengers, including the driver.

[37 FR 24902, Nov. 23, 1972, as amended at 49 FR 44215, Nov. 5, 1984; 51 FR 8200, Mar. 10, 1986; 53 FR 18057, May 19, 1988; 53 FR 39051, Oct. 4, 1988; 54 FR 40788, Oct. 3, 1989; 59 FR 26028, May 18, 1994; 60 FR 38744, 38745, July 28, 1995]

Subpart C—Background and Character

§391.21 Application for employment.

(a) Except as provided in subpart G of this part, a person shall not drive a commercial motor vehicle unless he/ she has completed and furnished the motor carrier that employs him/her with an application for employment that meets the requirements of paragraph (b) of this section.

¹A copy of the Schedule I drugs and other substances may be obtained by writing to the Director, Office of Motor Carrier Research and Standards, Washington, DC 20590, or to any Regional Office of Motor Carriers of the Federal Highway Administration at the address given in §390.27 of this subchapter.

- (b) The application for employment shall be made on a form furnished by the motor carrier. Each application form must be completed by the applicant, must be signed by him/her, and must contain the following information:
- (1) The name and address of the employing motor carrier;
- (2) The applicant's name, address, date of birth, and social security number:
- (3) The addresses at which the applicant has resided during the 3 years preceding the date on which the application is submitted;
- (4) The date on which the application is submitted;
- (5) The issuing State, number, and expiration date of each unexpired commercial motor vehicle operator's license or permit that has been issued to the applicant;
- (6) The nature and extent of the applicant's experience in the operation of motor vehicles, including the type of equipment (such as buses, trucks, truck tractors, semitrailers, full trailers, and pole trailers) which he/she has operated;
- (7) A list of all motor vehicle accidents in which the applicant was involved during the 3 years preceding the date the application is submitted, specifying the date and nature of each accident and any fatalities or personal injuries it caused:
- (8) A list of all violations of motor vehicle laws or ordinances (other than violations involving only parking) of which the applicant was convicted or forfeited bond or collateral during the 3 years preceding the date the application is submitted;
- (9) A statement setting forth in detail the facts and circumstances of any denial, revocation, or suspension of any license, permit, or privilege to operate a motor vehicle that has been issued to the applicant, or a statement that no such denial, revocation, or suspension has occurred;
- (10) A list of the names and addresses of the applicant's employers during the 3 years preceding the date the application is submitted, together with the dates he/she was employed by, and his/her reason for leaving the employ of, each employer;

- (11) For those drivers applying to operate a commercial motor vehicle as defined by Part 383 of this subchapter, a list of the names and addresses of the applicant's employers during the 7-year period preceding the 3 years contained in paragraph (b)(10) of this section for which the applicant was an operator of a commercial motor vehicle, together with the dates of employment and the reasons for leaving such employment; and
- (12) The following certification and signature line, which must appear at the end of the application form and be signed by the applicant:

This certifies that this application was completed by me, and that all entries on it and information in it are true and complete to the best of my knowledge.

(Date)

(Applicant's signature)

- (c) A motor carrier may require an applicant to provide information in addition to the information required by paragraph (b) of this section on the application form.
- (d) Before an application is submitted, the motor carrier shall inform the applicant that the information he/she provides in accordance with paragraph (b) (10) of this section may be used, and the applicant's prior employers may be contacted, for the purpose of investigating the applicant's background as required by § 391.23.

[35 FR 6460, Apr. 22, 1970, as amended at 35 FR 17420, Nov. 13, 1970; 52 FR 20589, June 1, 1987; 60 FR 38744, July 28, 1995]

§391.23 Investigation and inquiries.

- (a) Except as provided in subpart G of this part, each motor carrier shall make the following investigations and inquiries with respect to each driver it employs, other than a person who has been a regularly employed driver of the motor carrier for a continuous period which began before January 1, 1971:
- (1) An inquiry into the driver's driving record during the preceding 3 years to the appropriate agency of every State in which the driver held a motor vehicle operator's license or permit during those 3 years; and

(2) An investigation of the driver's employment record during the preceding 3 years.

(b) The inquiry to State agencies required by paragraph (a)(1) of this section must be made within 30 days of the date the driver's employment begins and shall be made in the form and manner those agencies prescribe. A copy of the response by each State agency, showing the driver's driving record or certifying that no driving record exists for that driver, shall be retained in the carrier's files as part of the driver's qualification file.

(c) The investigation of the driver's employment record required by paragraph (a)(2) of this section must be made within 30 days of the date his/her employment begins. The investigation may consist of personal interviews, telephone interviews, letters, or any other method of obtaining information that the carrier deems appropriate. Each motor carrier must make a written record with respect to each past employer who was contacted. record must include the past employer's name and address, the date he/she was contacted, and his/her comments with respect to the driver. The record shall be retained in the motor carrier's files as part of the driver's qualification file.

[35 FR 6460, Apr. 22, 1970, as amended at 35 FR 17420, Nov. 13, 1970]

§391.25 Annual review of driving record.

Except as provided in subpart G of this part, each motor carrier shall, at least once every 12 months, review the driving record of each driver it employs to determine whether that driver meets minimum requirements for safe driving or is disqualified to drive a commercial motor vehicle pursuant to §391.15. In reviewing a driving record, the motor carrier must consider any evidence that the driver has violated applicable provisions of the Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations. The motor carrier must also consider the driver's accident record and any evidence that the driver has violated laws governing the operation of motor vehicles, and must give great weight to violations, such as speeding, reckless

driving, and operating while under the influence of alcohol or drugs, that indicate that the driver has exhibited a disregard for the safety of the public. A note, setting forth the date upon which the review was performed and the name of the person who reviewed the driving record, shall be included in the driver's qualification file.

[35 FR 6460, Apr. 22, 1970, as amended at 35 FR 17420, Nov. 13, 1970; 60 FR 38744, July 28, 1995]

§391.27 Record of violations.

(a) Except as provided in subpart G of this part, each motor carrier shall, at least once every 12 months, require each driver it employs to prepare and furnish it with a list of all violations of motor vehicle traffic laws and ordinances (other than violations involving only parking) of which the driver has been convicted or on account of which he/she has forfeited bond or collateral during the preceding 12 months.

(b) Each driver shall furnish the list required in accordance with paragraph (a) of this section. If the driver has not been convicted of, or forfeited bond or collateral on account of, any violation which must be listed, he/she shall so

(c) The form of the driver's list or certification shall be prescribed by the motor carrier. The following form may be used to comply with this section:

DRIVER'S CERTIFICATION

I certify that the following is a true and complete list of traffic violations (other than parking violations) for which I have been convicted or forfeited bond or collateral during the past 12 months.

Date of conviction Offense

Location Type of motor vehicle operated

If no violations are listed above, I certify that I have not been convicted or forfeited bond or collateral on account of any violation required to be listed during the past 12 months.

(Date of certification) (Driver's signature)

(Motor carrier's name)

(Motor carrier's address)

(Reviewed by: Signature) (Title)

(d) The motor carrier shall retain the list or certificate required by this section, or a copy of it, in its files as part of the driver's qualification file.

(e) Drivers who have provided information required by §383.31 of this subchapter need not repeat that information in the annual list of violations required by this section.

[35 FR 6460, Apr. 22, 1970, as amended at 35 FR 17420, Nov. 13, 1970; 52 FR 20589, June 1, 1987; 60 FR 38745, July 28, 1995]

Subpart D—Tests

§391.31 Road test.

- (a) Except as provided in subpart G, a person shall not drive a commercial motor vehicle unless he/she has first successfully completed a road test and has been issued a certificate of driver's road test in accordance with this section.
- (b) The road test shall be given by the motor carrier or a person designated by it. However, a driver who is a motor carrier must be given the test by a person other than himself/herself. The test shall be given by a person who is competent to evaluate and determine whether the person who takes the test has demonstrated that he/she is capable of operating the commercial motor vehicle, and associated equipment, that the motor carrier intends to assign him/her.
- (c) The road test must be of sufficient duration to enable the person who gives it to evaluate the skill of the person who takes it at handling the commercial motor vehicle, and associated equipment, that the motor carriers intends to assign to him/her. As a minimum, the person who takes the test must be tested, while operating the type of commercial motor vehicle the motor carrier intends to assign him/her, on his/her skill at performing each of the following operations:
- (1) The pretrip inspection required by §392.7 of this subchapter;
- (2) Coupling and uncoupling of combination units, if the equipment he/she may drive includes combination units;
- (3) Placing the commercial motor vehicle in operation;
- (4) Use of the commercial motor vehicle's controls and emergency equipment;
- (5) Operating the commercial motor vehicle in traffic and while passing other motor vehicles:

- (6) Turning the commercial motor vehicle;
- (7) Braking, and slowing the commercial motor vehicle by means other than braking; and
- (8) Backing and parking the commercial motor vehicle.
- (d) The motor carrier shall provide a road test form on which the person who gives the test shall rate the performance of the person who takes it at each operation or activity which is a part of the test. After he/she completes the form, the person who gave the test shall sign it.
- (e) If the road test is successfully completed, the person who gave it shall complete a certificate of driver's road test in substantially the form prescribed in paragraph (f) of this section.
- (f) The form for the certificate of driver's road test is substantially as follows:

CERTIFICATION OF ROAD TEST

Driver's name ————————————————————————————————————	feur's License No ———
State	
Type of power unit er(s) ————	Type of trail-
If passenger carrier,	type of bus
This is to certif	y that the above-named
driver was given a r	oad test under my super-
	, 19, consisting of
approximately	_ miles of driving.

It is my considered opinion that this driver possesses sufficient driving skill to operate safely the type of commercial motor vehicle listed above.

(Signature of examiner)

(Title)

(Organization and address of examiner)

- (g) A copy of the certificate required by paragraph (e) of this section shall be given to the person who was examined. The motor carrier shall retain in the driver qualification file of the person who was examined—
- (1) The original of the signed road test form required by paragraph (d) of this section: and
- (2) The original, or a copy of, the certificate required by paragraph (e) of this section.

[35 FR 6460, Apr. 22, 1970, as amended at 36 FR 223, Jan. 7, 1971; 59 FR 8752, Feb. 23, 1994; 60 FR 38744, July 28, 1995]

§391.33 Equivalent of road test.

- (a) In place of, and as equivalent to, the road test required by §391.31, a person who seeks to drive a commercial motor vehicle may present, and a motor carrier may accept—
- (1) A valid operator's license which has been issued to him/her by a State that licenses drivers to operate specific categories of commercial motor vehicles and which, under the laws of that State, licenses him/her after successful completion of a road test in a commercial motor vehicle of the type the motor carrier intends to assign to him/her; or
- (2) A copy of a valid certificate of driver's road test issued to him/her pursuant to §391.31 within the preceding 3 years.
- (b) If a driver presents, and a motor carrier accepts, a license or certificate as equivalent to the road test, the motor carrier shall retain a legible copy of the license or certificate in its files as part of the driver's qualification file.
- (c) A motor carrier may require any person who presents a license or certificate as equivalent to the road test to take a road test or any other test of his/her driving skill as a condition to his/her employment as a driver.

[35 FR 6460, Apr. 22, 1970, as amended at 60 FR 38744, July 28, 1995]

Subpart E—Physical Qualifications and Examinations

§391.41 Physical qualifications for drivers.

- (a) A person shall not drive a commercial motor vehicle unless he/she is physically qualified to do so and, except as provided in §391.67, has on his/her person the original, or a photographic copy, of a medical examiner's certificate that he/she is physically qualified to drive a commercial motor vehicle
- (b) A person is physically qualified to drive a commercial motor vehicle if that person—
- (1) Has no loss of a foot, a leg, a hand, or an arm, or has been granted a waiver pursuant to §391.49;
 - (2) Has no impairment of:

- (i) A hand or finger which interferes with prehension or power grasping; or
- (ii) An arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or any other significant limb defect or limitation which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or has been granted a waiver pursuant to § 391.49.
- (3) Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control:
- (4) Has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure.
- (5) Has no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with his/her ability to control and drive a commercial motor vehicle safely:
- (6) Has no current clinical diagnosis of high blood pressure likely to interfere with his/her ability to operate a commercial motor vehicle safely;
- (7) Has no established medical history or clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, neuromuscular, or vascular disease which interferes with his/her ability to control and operate a commercial motor vehicle safely;
- (8) Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a commercial motor vehicle;
- (9) Has no mental, nervous, organic, or functional disease or psychiatric disorder likely to interfere with his/her ability to drive a commercial motor vehicle safely;
- (10) Has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at

least 70° in the horizontal Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber:

(11) First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

(12) Does not use a Schedule I drug or other substance identified in appendix D to this subchapter¹, an amphetamine, a narcotic, or any other habitforming drug, except that a driver may use such a substance or drug if the substance or drug is prescribed by a licensed medical practitioner who is familiar with the driver's medical history and assigned duties and who has advised the driver that the prescribed substance or drug will not adversely affect the driver's ability to safely operate a commercial motor vehicle; and

- (13) Has no current clinical diagnosis of alcoholism.
- (c) Drivers subject to subpart H of this part shall be tested in compliance with the requirements of that subpart.

[35 FR 6460, Apr. 22, 1970, as amended at 35 FR 17420, Nov. 13, 1970; 36 FR 223, Jan. 7, 1971; 36 FR 12857, July 8, 1971; 43 FR 56900, Dec. 5, 1978; 51 FR 17571, May 13, 1986; 53 FR 18057, May 19, 1988; 53 FR 47154, Nov. 21, 1988; 55 FR 3554, Feb. 1, 1990; 60 FR 38744, 38745, July 28, 1995]

§391.43 Medical examination; certificate of physical examination.

(a)(1) Except as provided by paragraph (b) of this section, the medical examination shall be performed by a licensed medical examiner as defined in § 390.5 of this subchapter.

- (2) The drug use verification procedures required by subpart H need not be performed by or under the supervision of the medical examiner. If not performed, the medical examiner shall assess compliance with §391.41(b)(12) based on his/her observations, statements of the applicant and/or any tests performed.
- (b) A licensed optometrist may perform so much of the medical examination as pertains to visual acuity, field of vision, and the ability to recognize colors as specified in paragraph (10) of § 391.41(b).
 - (c) Medical examiners shall:
- (1) Be knowledgeable of the specific physical and mental demands associated with operating a commercial motor vehicle and the requirements of this subpart, including the medical regulatory criteria prepared by the FHWA as guidelines to aid the medical examiner in making the qualification determination; and
- (2) Be proficient in the use of and use the medical protocols necessary to adequately perform the medical examination required by this section.
- (d) Any driver authorized to operate a commercial motor vehicle within an exempt intracity zone pursuant to §391.2(d) shall furnish the examining medical examiner with a copy of the medical findings that led to the issuance of the first certificate of medical examination which allowed the driver to operate a commercial motor vehicle wholly within an exempt intracity zone.
- (e) Any driver operating under a limited exemption authorized by §391.64 shall furnish the medical examiner with a copy of the annual medical findings of the endocrinologist, ophthalmologist or optometrist, as required under that section. If the medical examiner finds the driver qualified under the limited exemption in §391.64, such fact shall be noted on the Medical Examiner's Certificate.
- (f) The medical examination shall be performed, and its results shall be recorded, substantially in accordance with the following instructions and examination form. Existing forms may be used until current printed supplies are depleted or until March 31, 1997.

¹A copy of the Schedule I drugs and other substances may be obtained by writing to the Director, Office of Motor Carrier Research and Standards, Washington, DC 20590, or to any Regional Office of Motor Carriers of the Federal Highway Administration at the address given in §390.27 of this subchapter.

INSTRUCTIONS FOR PERFORMING AND RECORDING PHYSICAL EXAMINATIONS

The examining medical examiner should review these instructions before performing the physical examination. Answer each question yes or no where appropriate.

The examining medical examiner should be aware of the rigorous physical demands and mental and emotional responsibilities placed on the driver of a commercial motor vehicle. In the interest of public safety the examining medical examiner is required to certify that the driver does not have any physical, mental, or organic defect of such a nature as to affect the driver's ability to operate safely a commercial motor vehicle.

General information. The purpose of this history and physical examination is to detect the presence of physical, mental, or organic defects of such a character and extent as to affect the applicant's ability to operate a commercial motor vehicle safely. The examination should be made carefully and at least as complete as indicated by the attached form. History of certain defects may be cause for rejection or indicate the need for making certain laboratory tests or a further, and more stringent, examination. Defects may be recorded which do not, because of their character or degree, indicate that certification of physical fitness should be denied. However, these defects should be discussed with the applicant and he/she should be advised to take the necessary steps to insure correction, particularly of those which, if neglected, might lead to a condition likely to affect his/her ability to drive safely.

General appearance and development. Note marked overweight. Note any posture defect, perceptible limp, tremor, or other defects that might be caused by alcoholism, thyroid intoxication, or other illnesses. The Federal Motor Carrier Safety Regulations provide that no driver shall use a narcotic or other habit-forming drugs.

Head-eyes. When other than the Snellen chart is used, the results of such test must be expressed in values comparable to the standard Snellen test. If the applicant wears corrective lenses, these should be worn while applicant's visual acuity is being tested. If appropriate, indicate on the Medical Examiner's Certificate by checking the box, 'Qualified only when wearing corrective lenses." In recording distance vision use 20 feet as normal. Report all vision as a fraction with 20 as numerator and the smallest type read at 20 feet as denominator. Note ptosis, discharge, visual fields, ocular muscle imbalance, color blindness, corneal scar, exophtalmos, or strabismus, uncorrected by corrective lenses. Monocular drivers are not qualified to operate commercial motor vehicles under existing Federal Motor Carrier Safety Regulations. If the driver habitually wears contact lenses, or intends to do so while driving, there should be sufficient evidence to indicate that he/she has good tolerance is well adapted to their use. The use of contact lenses should be noted on the record.

Ears. Note evidence of mastoid or middle ear disease, discharge, symptoms of aural vertigo, or Meniere's Syndrome. When recording hearing, record distance from patient at which a forced whispered voice can first be heard. If audiometer is used to test hearing, record decibel loss at 500 Hz, 1,000 Hz. and 2,000 Hz.

Throat. Note evidence of disease, irremediable deformities of the throat likely to interfere with eating or breathing, or any laryngeal condition which could interfere with the safe operation of a commercial motor vehicle.

Thorax-heart. Stethoscopic examination is required. Note murmurs and arrhythmias, and any past or present history of cardio-vascular disease, of a variety known to be accompanied by syncope, dyspnea, collapse, enlarged heart, or congestive heart failures. Electrocardiogram is required when findings so indicate.

Blood pressure. Record with either spring or mercury column type of sphygomomanometer. If the blood pressure is consistently above 160/90 mm. Hg., further tests may be necessary to determine whether the driver is qualified to operate a commercial motor vehicle.

Lungs. If any lung disease is detected, state whether active or arrested; if arrested, your opinion as to how long it has been quiescent.

Gastrointestinal system. Note any diseases of the gastrointestinal system.

Abdomen. Note wounds, injuries, scars, or weakness of muscles of abdominal walls sufficient to interfere with normal function. Any hernia should be noted if present. State how long and if adequately contained by truss.

Abnormal masses. If present, note location, if tender, and whether or not applicant knows how long they have been present. If the diagnosis suggests that the condition might interfere with the control and safe operation of a commercial motor vehicle, more stringent tests must be made before the applicant can be certified.

Tenderness. When noted, state where most pronounced, and suspected cause. If the diagnosis suggests that the condition might interfere with the control and safe operation of a commercial motor vehicle, more stringent tests must be made before the applicant can be certified.

Genito-urinary. Urinalysis is required. Acute infections of the genito-urinary tract, as defined by local and State public health laws, indications from urinalysis of uncontrolled diabetes, symptomatic albumin-urea in the urine, or other findings indicative of health conditions likely to interfere with the control and safe operation of a commercial

motor vehicle, will disqualify an applicant from operating a motor vehicle.

Neurological. If positive Romberg is reported, indicate degrees of impairment. Pupillary reflexes should be reported for both light and accommodation. Knee jerks are to be reported absent only when not obtainable upon reinforcement and as increased when foot is actually lifted from the floor following a light blow on the patella, sensory vibratory and positional abnormalities should be noted.

Extremities. Carefully examine upper and lower extremities. Record the loss of impairment of a leg, foot, toe, arm, hand, or fingers. Note any and all deformities, the presence of atrophy, semiparalysis or paralysis, or varicose veins. If a hand or finger deformity exists, determine whether sufficient grasp is present to enable the driver to secure and maintain a grip on the steering wheel. If a leg deformity exists, determine whether sufficient mobility and strength exist to enable the driver to operate pedals properly. Particular attention should be given to and a record should be made of, any impairment or structural defect which may interfere with the driver's ability to operate a commercial motor vehicle safely.

Spine. Note deformities, limitation of motion, or any history of pain, injuries, or disease, past or presently experienced in the cervical or lumbar spine region. If findings so dictate, radiologic and other examinations should be used to diagnose congenital or acquired defects; or spondylolisthesis and scoliosis.

Recto-genital studies. Diseases or conditions causing discomfort should be evaluated carefully to determine the extent to which the condition might be handicapping while lifting, pulling, or during periods of prolonged driving that might be necessary as part of the driver's duties.

Laboratory and other special findings. Urinalysis is required, as well as such other tests as the medical history or findings upon physical examination may indicate are necessary. A serological test is required if the applicant has a history of luetic infection or present physical findings indicate the possibility of latent syphilis. Other studies deemed advisable may be ordered by the examining medical examiner.

Diabetes. If insulin is necessary to control a diabetic condition, the driver is not qualified to operate a commercial motor vehicle. If mild diabetes is noted at the time of examination and it is stabilized by use of a hypoglycemic drug and a diet that can be obtained while the driver is on duty, it should not be considered disqualifying. However, the driver must remain under adequate medical supervision.

Controlled Substances Testing. If a test for controlled substances is performed as part of the medical examination, the medical examiner is to check the box next to the state-ment, "Controlled substances test performed" on the medical examination form. If a test for controlled substances is not performed, the medical examiner is to check the box next to the statement, "Controlled substances test not performed." If a controlled substances test is performed under the requirements of subpart H of this part, then the medical examiner must also check the box next to the statement, "in accordance with subpart H," and must obtain information that the results of such test were negative prior to certifying that the driver is otherwise medically qualified. If a controlled substance test is performed but not in accordance with subpart H, the medical examiner must also check the box next to the statement, "not in accordance with subpart and ensure that the results of the test were negative prior to certifying that the driver is otherwise medically qualified.

The medical examiner must date and sign his/her findings upon completion of the examination.

Examination to Determine Physical Condition of Drivers

Drive	r's nan	ne□ New Certification	
Address		□ Recertification	
Socia	l Secu	rity No	
		h Age	
Yes	No	Health History	
		Head or spinal injuries.	
		Seizures, fits, convulsions, or fainting.	
		Extensive confinement by illness or injury.	
		Cardiovascular disease.	
		Tuberculosis.	
000000000000000000000000000000000000000		Syphilis.	
		Gonorrhea.	
		Diabetes.	
		Rheumatic fever.	
		Asthma.	
		Kidney disease.	
		Muscular disease.	
		Suffering from any other disease.	
		Permanent defect from illness, disease or	
_	_	injury.	
		Psychiatric disorder.	
		Any other nervous disorder.	

If answer to any of the above is yes, explain:

PHYSICAL EXAMINATION

General appearance and development:
Good Fair Poor
Vision: For distance:
Right 20/ Left 20/
☐ Without corrective lenses.
☐ With corrective lenses if worn.
Evidence of disease or injury:
Right Left

Color Test	General comments
Horizontal field of vision:	
Right° Left°	(Date of examination)
Hearing:	
Right ear Left ear	(Address of examining medical examiner)
Disease or injury	
Audiometric Test (complete only if audiom-	(Name of examining medical examiner
eter is used to test hearing) decibel loss as	(Print))
500 Hz, at 1,000 Hz, at 2,000 Hz	(Title) (License or Certification No.)
Throat	(State)
Thorax:	(Sears)
Heart	(Signature of examining medical examiner)
If organic disease is present, is it fully comp-	
ensated?	NOTE: This section to be completed only when visual test is conducted by a licensed
Blood pressure:	ophthalmologist or optometrist.
Systolic Diastolic	opmentumorogise or opcome crise.
Pulse: Before exercise	(Date of examination)
Immediately after exercise	
Lungs	(Address of ophthalmologist or
Abdomen:	optometrist)
Scars Abnormal masses	
Tenderness	(Name of ophthalmologist or optometrist
Hernia: Yes No	(Print))
If so, where?	(Signature of ophthalmologist or
If so, where? Is truss worn?	optometrist)
Gastrointestinal:	
Ulceration or other disease:	(g) If the medical examiner finds that
Yes No	the person he/she examined is phys-
Genito-Urinary:	ically qualified to drive a commercial
Scars	motor vehicle in accordance with
Urethral discharge	§391.41(b), he/she shall complete a cer-
Reflexes:	tificate in the form prescribed in para-
Romberg	graph (g) of this section and furnish
Pupillary Light R L	one copy to the person who was exam-
Accommodation Right Left	ined and one copy to the motor carrier
Knee Jerks:	that employs him/her.
Right:	(h) The medical examiner's certifi-
Normal Increased Absent	cate shall be in accordance with the
Left:	following form. Existing forms may be
Normal Increased Absent	used until current printed supplies are
Remarks	depleted or until March 31, 1997, pro-
Extremities:	vided that the medical examiner writes
Upper	down in pen and ink any applicable in-
Lower	formation contained in the following
Spine	form:
Laboratory and other Special Findings:	
Urine: Spec. Gr Alb	MEDICAL EXAMINER'S CERTIFICATE
Sugar	MEDICAL EXAMINER'S CERTIFICATE
Other laboratory data (Serology, etc.)	I certify that I have examined
Radiological data	(Driver's Name—Print)
Radiological data Electrocardiograph	In accordance with the Federal Motor Car-
Controlled Substances Testing	rier Safety Regulations (49 CFR 391.41
☐ Controlled substances test performed—	through 391.49) and with knowledge of his/her
☐ In accordance with subpart H.	duties, I find him/her qualified under the reg-
\square Not in accordance with subpart H.	ulations.
□ Controlled substances test NOT per-	-Qualified only when wearing corrective
formed.	lenses

—Qualified only when wearing a hearing

—Qualified by operation of 49 CFR 391.64
 —Medically unqualified unless accompanied by a waiver

A completed examination form for this person is on file in my office.

Area Code & Telephone Number

(License or Certificate No.)

(State in Which Licensed)

(Expiration Date)

(Name & Title of Medical Examiner—Print)

(Signature of Medical Examiner)

(Signature of Driver)

(Address of Driver)

[35 FR 6460, Apr. 22, 1970, as amended at 35 FR 17420, Nov. 13, 1970; 36 FR 8452, May 6, 1971; 36 FR 12857, July 8, 1971; 43 FR 56900, Dec. 5, 1978; 46 FR 53418, Oct. 29, 1981; 53 FR 18057, May 19, 1988; 53 FR 47154, Nov. 21, 1988; 54 FR 12202, Mar. 24, 1989; 55 FR 3555, Feb. 1, 1990; 57 FR 33278, July 28, 1992; 58 FR 59196, Nov. 8, 1993; 60 FR 38745, 38746, July 28, 1995; 61 FR 13347, Mar. 26, 1996]

§391.45 Persons who must be medically examined and certified.

Except as provided in §391.67, the following persons must be medically examined and certified in accordance with §391.43 as physically qualified to operate a commercial motor vehicle:

- (a) Any person who has not been medically examined and certified as physically qualified to operate a commercial motor vehicle;
- (b)(1) Any driver who has not been medically examined and certified as qualified to operate a commercial motor vehicle during the preceding 24 months; or
- (2) Any driver authorized to operate a commercial motor vehicle only with an exempt intracity zone pursuant to §391.62, or only by operation of the exemption in §391.64, if such driver has not been medically examined and certified as qualified to drive in such zone during the preceding 12 months; and

(c) Any driver whose ability to perform his/her normal duties has been impaired by a physical or mental injury or disease.

[35 FR 6460, Apr. 22, 1970, as amended at 36 FR 223, Jan. 7, 1971; 54 FR 12202, Mar. 24, 1989; 61 FR 13347, Mar. 26, 1996]

§391.47 Resolution of conflicts of medical evaluation.

- (a) Applications. Applications for determination of a driver's medical qualifications under standards in this part will only be accepted if they conform to the requirements of this section.
- (b) *Content.* Applications will be accepted for consideration only if the following conditions are met.
- (1) The application must contain the name and address of the driver, motor carrier, and all physicians involved in the proceeding.
- (2) The applicant must submit proof that there is a disagreement between the physician for the driver and the physician for the motor carrier concerning the driver's qualifications.
- (3) The applicant must submit a copy of an opinion and report including results of all tests of an impartial medical specialist in the field in which the medical conflict arose. The specialist should be one agreed to by the motor carrier and the driver.
- (i) In cases where the driver refuses to agree on a specialist and the applicant is the motor carrier, the applicant must submit a statement of his/her agreement to submit the matter to an impartial medical specialist in the field, proof that he/she has requested the driver to submit to the medical specialist, and the response, if any, of the driver to his/her request.
- (ii) In cases where the motor carrier refuses to agree on a medical specialist, the driver must submit an opinion and test results of an impartial medical specialist, proof that he/she has requested the motor carrier to agree to submit the matter to the medical specialist and the response, if any, of the motor carrier to his/her request.
- (4) The applicant must include a statement explaining in detail why the decision of the medical specialist identified in paragraph (b)(3) of this section, is unacceptable.

- (5) The applicant must submit proof that the medical specialist mentioned in paragraph (b)(3) of this section was provided, prior to his/her determination, the medical history of the driver and an agreed-upon statement of the work the driver performs.
- (6) The applicant must submit the medical history and statement of work provided to the medical specialist under paragraph (b)(5) of this section.
- (7) The applicant must submit all medical records and statements of the physicians who have given opinions on the driver's qualifications.
- (8) The applicant must submit a description and a copy of all written and documentary evidence upon which the party making application relies in the form set out in 49 CFR 386.37.
- (9) The application must be accompanied by a statement of the driver that he/she intends to drive in interstate commerce not subject to the commercial zone exemption or a statement of the carrier that he/she has used or intends to use the driver for such work.
- (10) The applicant must submit three copies of the application and all records.
- (c) Information. The Director, Office of Motor Carrier Research and Standards may request further information from the applicant if he/she determines that a decision cannot be made on the evidence submitted. If the applicant fails to submit the information requested, the Director may refuse to issue a determination.
- (d)(1) Action. Upon receiving a satisfactory application the Director, Office of Motor Carrier Research and Standards shall notify the parties (the driver, motor carrier, or any other interested party) that the application has been accepted and that a determination will be made. A copy of all evidence received shall be attached to the notice.
- (2) Reply. Any party may submit a reply to the notification within 15 days after service. Such reply must be accompanied by all evidence the party wants the Director, Office of Motor Carrier Research and Standards to consider in making his/her determination. Evidence submitted should include all

medical records and test results upon which the party relies.

(3) Parties. A party for the purposes of this section includes the motor carrier and the driver, or anyone else submitting an application.

- (e) Petitions to review, burden of proof. The driver or motor carrier may petition to review the Director's determination. Such petition must be submitted in accordance with §386.13(a) of this chapter. The burden of proof in such a proceeding is on the petitioner.
- (f) Status of driver. Once an application is submitted to the Director, Office of Motor Carrier Research and Standards, the driver shall be deemed disqualified until such time as the Director, Office of Motor Carrier Research and Standards makes a determination, or until the Director, Office of Motor Carrier Research and Standards orders otherwise.

(49 U.S.C. 304, 322; 18 U.S.C. 831-835; Pub. L. 93-633, 88 Stat. 8156 (49 U.S.C. 1801, et seq.); 49 CFR 1.48, 301.60)

[42 FR 18081, Apr. 5, 1977, as amended at 42 FR 53966, Oct. 4, 1977; 60 FR 38746, July 28, 1995]

§ 391.49 Waiver of certain physical defects.

- (a) A person who is not physically qualified to drive under §391.41(b) (1) or (2) and who is otherwise qualified to drive a commercial motor vehicle, may drive a commercial motor vehicle, if the Regional Director of Motor Carriers has granted a waiver to that person.
- (b) A letter of application for a waiver may be submitted jointly by the person who seeks a waiver of the physical disqualification (driver applicant) and by the motor carrier that will employ the driver applicant if the application is granted. The application must be addressed to the Regional Director of Motor Carriers for the region in which the coapplicant motor carrier's principal place of business is located. The address for each regional office is listed in §390.27 of this subchapter. Exception. A letter of application for a waiver may be submitted unilaterally by a driver applicant. The application must be addressed to the Regional Director of Motor Carriers for the region in which the driver has legal residence.

The address of each regional office is listed in $\S390.27$ of this subchapter. The driver applicant must comply with all the requirements of paragraph (c) of this section except paragraphs (c)(1) (i) and (iii). The driver applicant shall respond to the requirements of paragraph (c)(2) (i) to (v) of this section, if the information is known.

- (c) A letter of application for a waiver shall contain—
 - (1) Identification of the applicant(s):
- (i) Name and complete address of the motor carrier coapplicant;
- (ii) Name and complete address of the driver applicant;
- (iii) The Federal Highway Administration Motor Carrier Identification Number, if known; and
- (iv) A description of the driver applicant's limb impairment for which waiver is requested.
- (2) Description of the type of operation the driver will be employed to perform:
- (i) State(s) in which the driver will operate for the motor carrier coapplicant (if more than 10 States, designate general geographic area only);
- (ii) Average period of time the driver will be driving and/or on duty, per day;
- (iii) Type of commodities or cargo to be transported;
- (iv) Type of driver operation (i.e. sleeper-team, relay, owner operator, etc.); and
- (v) Number of years experience operating the type of commercial motor vehicle(s) requested in the letter of application and total years of experience operating all types of motor vehicles.
- (3) Description of the commercial motor vehicle(s) the driver applicant intends to drive:
- (i) Truck, truck-tractor, or bus make, model, and year (if known);
 - (ii) Drive train;
- (A) Transmission type (automatic or manual—if manual, designate number of forward speeds);
- (B) Auxiliary transmission (if any) and number of forward speeds; and
- (C) Rear axle (designate single speed, 2 speed, or 3 speed).
 - (iii) Type of brake system;
- (iv) Steering, manual or power assisted:

- (v) Description of type of trailer(s) (i.e., van, flat bed, cargo tank, drop frame, lowboy, or pole);
- (vi) Number of semitrailers or full trailers to be towed at one time;
- (vii) For commercial motor vehicles designed to transport passengers, indicate the seating capacity of the commercial motor vehicle; and
- (viii) Description of any modification(s) made to the commercial motor vehicle for the driver applicant; attach photograph(s) where applicable.
 - (4) Otherwise qualified:
- (i) The coapplicant motor carrier must certify that the driver applicant is otherwise qualified under the regulations of this part;
- (ii) In the case of a unilateral application, the driver applicant must certify that (s)he is otherwise qualified under the regulations of this part.
 - (5) Signature of applicant(s):
- (i) Driver applicant's signature and date signed;
- (ii) Motor carrier official's signature (if application has a coapplicant), title, and date signed. Dependent upon the motor carrier's organizational structure (corporation, partnership, or proprietorship), this signer of the application shall be an officer, partner, or the proprietor.
- (d) The letter of application for a waiver shall be accompanied by:
- (1) A copy of the results of the medical examination performed pursuant to § 391.43:
- (2) A copy of the medical certificate completed pursuant to §391.43(e);
- (3) A medical evaluation summary completed by either a board qualified or board certified physiatrist (doctor of physical medicine) or orthopedic surgeon:

NOTE: The coapplicant motor carrier or the driver applicant shall provide the physiatrist or orthopedic surgeon with a description of the job tasks the driver applicant will be required to perform.

- (i) The medical evaluation summary for a driver applicant disqualified under § 391.41(b)(1) shall include:
- (A) An assessment of the functional capabilities of the driver as they relate to the ability of the driver to perform normal tasks associated with operating a commercial motor vehicle, and

- (B) A statement by the examiner that the applicant is capable of demonstrating precision prehension (e.g., manipulating knobs and switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) with each upper limb separately. This requirement does not apply to an individual who was granted a waiver, absent a prosthetic device, prior to the publication of this amendment.
- (ii) The medical evaluation summary for a driver applicant disqualified under § 391.41(b)(2) shall include:
- (A) An explanation as to how and why the impairment interferes with the ability of the applicant to perform normal tasks associated with operating a commercial motor vehicle;
- (B) An assessment and medical opinion of whether the condition will likely remain medically stable over the lifetime of the driver applicant; and
- (C) A statement by the examiner that the applicant is capable of demonstrating precision prehension (e.g., manipulating knobs and switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) with each upper limb separately. This requirement does not apply to an individual who was granted a waiver, absent an orthotic device, prior to the publication of this amendment.
- (4) A description of the driver applicant's prosthetic or orthotic device worn, if any, by the driver applicant;
 - (5) Road test:
- (i) A copy of the driver applicant's road test administered by the motor carrier coapplicant and the certificate issued pursuant to §391.31 (b) through (g) or
- (ii) A unilateral applicant shall be responsible for having a road test administered by a motor carrier or a person who is competent to administer the test and evaluate its results.
 - (6) Application for employment:
- (i) A copy of the driver applicant's application for employment completed pursuant to §391.21; or
- (ii) A unilateral applicant shall be responsible for submitting a copy of the last commercial driving position's employment application s/he held. If not previously employed as a commercial driver, so state.

- (7) A copy of the driver applicant's waiver of certain physical defects issued by the individual State(s), where applicable; and
- (8) A copy of the driver applicant's State Motor Vehicle Driving Record for the past 3 years from each State in which a motor vehicle driver's license or permit has been obtained.
- (e) *Agreement.* A motor carrier that employs a driver with a waiver agrees to:
- (1) File promptly (within 30 days) with the Regional Director of Motor Carriers such documents and information as may be required about driving activities, accidents, arrests, license suspensions, revocations, or withdrawals, and convictions which involve the driver applicant. This applies whether the driver's waiver is a unilateral one or has a coapplicant motor carrier;
- (i) A motor carrier who is a coapplicant must file the required documents with the Regional Director of Motor Carriers for the region in which the carrier's principal place of business is located; or
- (ii) A motor carrier who employs a driver who has been issued a unilateral waiver must file the required documents with the Regional Director of Motor Carriers for the region in which the driver has legal residence.
- (2) Evaluate the driver with a road test using the trailer the motor carrier intends the driver to transport or, in lieu of, accept a certificate of a trailer road test from another motor carrier if the trailer type(s) is similar or accept the trailer road test done during the Skill Performance Evaluation if it is a similar trailer type(s) to that of the prospective motor carrier;

NOTE: Job tasks, as stated in paragraph (e)(3) of this section, are not evaluated in the Skill Performance Evalulation.

- (3) Evaluate the driver for those nondriving safety-related job tasks associated with whatever type of trailer(s) will be used and any other nondriving safety-related or job-related tasks unique to the operations of the employing motor carrier; and
- (4) Use the driver to operate the type of commercial motor vehicle defined in the waiver only when the driver is in compliance with the conditions and limitations of the waiver.

- (f) The driver shall supply each employing motor carrier with a copy of the waiver.
- (g) The Regional Director of Motor Carriers may require the driver applicant to demonstrate his or her ability to to safely operate the commercial motor vehicle(s) the driver intends to drive to an agent of the Regional Director of Motor Carriers. The waiver form will identify the power unit (bus, truck, truck-tractor) for which the waiver has been granted. The waiver forms will also identify the trailer type used in the Skill Performance Evaluation; however, the waiver is not limited to that specific trailer type. A driver may use the waiver with other trailer types if a successful trailer road test is completed in accordance with paragraph (e)(2) of this section. Job tasks, as stated in paragraph (e)(3) of this section, are not evaluated during the Skill Performance Evaluation.
- (h) The Regional Director of Motor Carriers may deny the application for waiver or may grant it totally or in part and issue the waiver subject to such terms, conditions, and limitations as deemed consistent with the public interest. A waiver is valid for a period not to exceed 2 years from date of issue, and may be renewed 30 days prior to the expiration date.
- (i) The waiver renewal application shall be submitted to the Regional Director of Motor Carriers for the region in which the driver has legal residence, if the waiver was issued unilaterally. If the waiver has a coapplicant, then the renewal application is submitted to the Regional Director of Motor Carriers for the region in which the coapplicant motor carrier's principal place of business is located. The waiver renewal application shall contain the following:
- (1) Name and complete address of motor carrier currently employing the applicant;
- (2) Name and complete address of the driver:
- (3) Effective date of the current waiv-
- (4) Expiration date of the current waiver;
- (5) Total miles driven under the current waiver;
- (6) Number of accidents incurred while driving under the current waiver,

including date of the accident(s), number of fatalities, number of injuries, and the estimated dollar amount of property damage;

- (7) A current medical examination report;
- (8) A medical evaluation summary pursuant to paragraph (d)(3) of this section if an unstable medical condition exists. All handicapped conditions classified under $\S391.41(b)(1)$ are considered unstable.

NOTE: Refer to paragraph (d)(3)(ii) of this section for the condition under §391.41(b)(2) which may be considered medically stable.

- (9) A copy of driver's current State motor vehicle driving record for the period of time the current waiver has been in effect;
- (10) Notification of any change in the type of tractor the driver will operate;
- (11) Driver's signature and date signed; and
- (12) Motor carrier coapplicant's signature and date signed.
- (j) Upon granting a waiver, the Regional Director of Motor Carriers will notify the driver applicant and coapplicant motor carrier (if applicable) by letter. The terms, conditions, and limitations of the waiver will be set forth. A motor carrier shall maintain a copy of the waiver in its driver qualification file. A copy of the waiver shall be retained in the motor carrier's file for a period of 3 years after the driver's employment is terminated. The driver applicant shall have the waiver (or a legible copy) in his/her possession whenever on duty.
- (k) The Regional Director of Motor Carriers may revoke a waiver after the person to whom it was issued is given notice of the proposed revocation and has been allowed a reasonable opportunity to appeal.
- (l) Falsifying information in the letter of application, the renewal application, or falsifying information required by this section by either the applicant or motor carrier is prohibited.

(Approved by the Office of Management and Budget under control number 2125–0080)

[48 FR 38487, Aug. 24, 1983, as amended at 49 FR 38293, Sept. 28, 1984; 50 FR 49851, Dec. 5, 1985; 51 FR 12621, Apr. 14, 1986; 60 FR 38745, 38746, July 28, 1995; 61 FR 1843, Jan. 24, 1996]

Subpart F—Files and Records

§391.51 Driver qualification files.

- (a) Except as provided in subpart G, each motor carrier shall maintain a driver qualification file for each driver it employs. A driver's qualification file may be combined with the driver's personnel file.
- (b) The qualification file for a driver who has been a regularly employed driver of the motor carrier for a continuous period which began before January 1, 1971, must include:
- (1) The medical examiner's certificate of his/her physical qualification to drive a commercial motor vehicle or a legible photographic copy of the certificate:
- (2) The letter from the Regional Director of Motor Carriers granting a waiver of a physical disqualification, if a waiver was issued under § 391.49;
- (3) The note relating to the annual review of his/her driving record required by §391.25;
- (4) The list or certificate relating to violations of motor vehicle laws and ordinances required by §391.27; and
- (5) Any other matter which relates to the driver's qualifications or ability to drive a commercial motor vehicle safely.
- (c) The qualification file for a regularly employed driver who has not been regularly employed by the motor carrier for a continuous period which began before January 1, 1971, must include:
- (1) The documents specified in paragraph (b) of this section;
- (2) The driver's application for employment completed in accordance with § 391.21;
- (3) The responses of State agencies and past employers to the motor carrier's inquiries concerning the driver's driving record and employment pursuant to §391.23; and
- (4) The certificate of driver's road test issued to the driver pursuant to §391.31 (e), or a copy of the license or certificate which the motor carrier accepted as equivalent to the driver's road test pursuant to §391.33.
- (d) The qualification file for an intermittent, casual, or occasional driver employed under the rules in §391.63 must include—

- (1) The medical examiner's certificate of his/her physical qualification to drive a commercial motor vehicle or a legible photographic copy of the certificate:
- (2) The certificate of driver's road test issued to the driver pursuant to §391.31(e), or a copy of the license or certificate which the motor carrier accepted as equivalent to the driver's road test pursuant to §391.31; and
- (3) The driver's name, his/her social security number, and the identification number, type, and issuing State of his/her commercial motor vehicle operator's license.
- (e) A using carrier's qualification file for a driver who is regularly employed by another motor carrier, and who is employed by the using carrier in accordance with §391.65 of this part, shall include a copy of a certificate, as prescribed by §391.65(a)(2) of this part, by the regularly employing carrier that the driver is fully qualified to drive a commercial motor vehicle.
- (f) Except as provided in paragraphs (g) and (h) of this section, each driver's qualification file shall be kept at the motor carrier's principal place of business for as long as a driver is employed by that motor carrier and for 3 years thereafter.
- (g) Upon a written request to, and with the approval of, the Regional Director of Motor Carriers for the region in which a motor carrier has his/her principal place of business, the carrier may retain one or more of its drivers' qualification files at a regional or terminal office. The addresses and jurisdictions of the Regional Director of Motor Carriers are shown in §390.27 of this subchapter.
- (h) The following records may be removed from a driver's qualification file after 3 years from date of execution:
- (1) The medical examiner's certificate of his/her physical qualification to drive a commercial motor vehicle or the photographic copy of the certificate as required by §391.43(d).
- (2) The note relating to the annual review of his/her driving record as required by §391.25.
- (3) The list or certificate relating to violations of motor vehicle laws and ordinance as required by §391.27.

(4) The letter issued under §391.49 granting a waiver of a physical disqualification.

(Sec. 204, Interstate Commerce Act, as amended, (49 U.S.C. 304); sec. 6, Department of Transportation Act (49 U.S.C. 1655), and the delegations of authority by the Secretary of Transportation and the Federal Highway Administrator at 49 CFR 1.48 and 301.60, respectively)

[35 FR 6460, Apr. 22, 1970, as amended at 35 FR 17420, Nov. 13, 1970; 41 FR 36656, Aug. 31, 1976; 42 FR 37370, July 21, 1977; 45 FR 46424, July 10, 1980; 53 FR 18057, May 19, 1988; 59 FR 8752, Feb. 23, 1994; 59 FR 60323, Nov. 23, 1994; 60 FR 38745, July 28, 1995]

Subpart G—Limited Exemptions

§ 391.61 Drivers who were regularly employed before January 1, 1971.

The provisions of §391.21 (relating to applications for employment), §391.23 (relating to investigations and inquiries), and §391.31 (relating to road tests) do not apply to a driver who has been a regularly employed driver (as defined in §390.5 of this subchapter) of a motor carrier for a continuous period which began before January 1, 1971, as long as he/she continues to be a regularly employed driver of that motor carrier. Such a driver is qualified to drive a commercial motor vehicle if he/she fulfills the requirements of paragraphs (b)(1) through (b)(9) of §391.11 (relating to qualifications of drivers).

[59 FR 60323, Nov. 23, 1994, as amended at 60 FR 38745, July 28, 1995]

§ 391.62 Limited exemptions for intracity zone drivers.

The provisions of $\S 391.11(b)(1)$ and 391.41(b)(1) through (b)(11) do not apply to a person who:

- (a) Was otherwise qualified to operate and operated a commercial motor vehicle in a municipality or exempt intracity zone thereof throughout the one-year period ending November 18, 1988.
- (b) Meets all the other requirements of this section;
- (c) Operates wholly within the exempt intracity zone (as defined in 49 CFR 390.5);
- (d) Does not operate a vehicle used in the transportation of hazardous materials in a quantity requiring placarding

under regulations issued by the Secretary under 49 U.S.C. chapter 51.; and

- (e) Has a medical or physical condition which:
- (1) Would have prevented such person from operating a commercial motor vehicle under the Federal Motor Carrier Safety Regulations contained in this subchapter;
- (2) Existed on July 1, 1988, or at the time of the first required physical examination after that date; and
- (3) The examining physician has determined this condition has not substantially worsened since July 1, 1988, or at the time of the first required physical examination after that date.

[61 FR 13346, Mar. 26, 1996; 61 FR 17253, Apr. 19, 1996]

§ 391.63 Intermittent, casual, or occasional drivers.

- (a) If a motor carrier employs a person who is not a regularly employed driver (as defined in § 390.5 of this subchapter) to drive a commercial motor vehicle for a single trip or on an intermittent, casual, or occasional basis, the motor carrier shall comply with all requirements of this part, except that the motor carrier need not—
- (1) Require the person to furnish an application for employment in accordance with §391.21:
- (2) Make the investigations and inquiries specified in §391.23 with respect to that person,
- (3) Perform the annual review of the person's driving record required by § 391.25; or
- (4) Require the person to furnish a record of violations or a certificate in accordance with §391.27.
- (b) Before a motor carrier permits a person described in paragraph (a) of this section to drive a commercial motor vehicle, the motor carrier must obtain his/her name, his/her social security number, and the identification number, type and issuing State of his/her commercial motor vehicle operator's license. The motor carrier must retain that information in its files for 3 years after the person's employment by the motor carrier ceases.

[35 FR 6460, Apr. 22, 1970, as amended at 53 FR 18057, May 19, 1988; 60 FR 38745, July 28, 1995]

§391.64 Grandfathering for certain drivers participating in vision and diabetes waiver study programs.

- (a) The provisions of §391.41(b)(3) do not apply to a driver who was a participant in good standing on March 31, 1996, in a waiver study program concerning the operation of commercial motor vehicles by insulin-controlled diabetic drivers; *provided*:
- (1) The driver is physically examined every year, including an examination by a board-certified/eligible endocrinologist attesting to the fact that the driver is:
 - (i) Otherwise qualified under § 391.41;
- (ii) Free of insulin reactions (an individual is free of insulin reactions if that individual does not have severe hypoglycemia or hypoglycemia unawareness, and has less than one documented, symptomatic hypoglycemic reaction per month);
- (iii) Able to and has demonstrated willingness to properly monitor and manage his/her diabetes; and
- (iv) Not likely to suffer any diminution in driving ability due to his/her diabetic condition.
- (2) The driver agrees to and complies with the following conditions:
- (i) A source of rapidly absorbable glucose shalll be carried at all times while driving;
- (ii) Blood glucose levels shall be selfmonitored one hour prior to driving and at least once every four hours while driving or on duty prior to driving using a portable glucose monitoring device equipped with a computerized memory;
- (iii) Submit blood glucose logs to the endocrinologist or medical examiner at the annual examination or when otherwise directed by an authorized agent of the FHWA;
- (iv) Provide a copy of the endocrinologist's report to the medical examiner at the time of the annual medical examination; and
- (v) Provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State or local enforcement official.

- (b) The provisions of §391.41(b)(10) do not apply to a driver who was a participant in good standing on March 31, 1996, in a waiver study program concerning the operation of commercial motor vehicles by drivers with visual impairment in one eye; *provided*:
- (1) The driver is physically examined every year, including an examination by an ophthalmologist or optometrist attesting to the fact that the driver:
- (i) Is otherwise qualified under § 391.41; and
- (ii) Continues to measure at least 20/40 (Snellen) in the better eye.
- (2) The driver provides a copy of the ophthalmologist or optometrist report to the medical examiner at the time of the annual medical examination.
- (3) The driver provides a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized federal, state or local enforcement official.

[61 FR 13346, Mar. 26, 1996]

§ 391.65 Drivers furnished by other motor carriers.

- (a) A motor carrier may employ a driver who is not a regularly employed driver of that motor carrier without complying with the generally applicable driver qualification file requirements in this part, if—
- (1) The driver is regularly employed by another motor carrier; and
- (2) The motor carrier which regularly employs the driver certifies that the driver is fully qualified to drive a commercial motor vehicle in a written statement which—
- (i) Is signed and dated by an officer or authorized employee of the regularly employing carrier;
- (ii) Contains the driver's name and signature;
- (iii) Certifies that the driver has been regularly employed as defined in § 390.5;
- (iv) Certifies that the driver is fully qualified to drive a commercial motor vehicle under the rules in part 391 of the Federal Motor Carrier Safety Regulations;
- (v) States the expiration date of the driver's medical examiner's certificate;

- (vi) Specifies an expiration date for the certificate, which shall be not longer than 2 years or, if earlier, the expiration date of the driver's current medical examiner's certificate: and
- (vii) After April 1, 1977, is substantially in accordance with the following form:

(Name of driver)

(SS No.)

(Signature of driver)

I certify that the above named driver, as defined in §391.3(c) is regularly driving a commercial motor vehicle operated by the below named carrier and is fully qualified under part 391, Federal Motor Carrier Safety Regulations. His/her current medical examiner's certificate expires on ______ (Date) This certificate expires:

(Date not later than expiration date of medical certificate)

Issued on _____ (date)
Issued by

(Name of carrier)

(Address)

(Signature)

(Title)

- (b) A motor carrier that obtains a certificate in accordance with paragraph (a) (2) of this section shall retain a copy of that certificate in its files for 3 years.
- (c) A carrier which certifies a driver's qualifications under this section shall—
- (1) Be responsible for the accuracy of the certificate; and
- (2) Recall the unexpired certificate carried by a driver immediately upon learning that the driver is no longer qualified under the rules in this part.

[41 FR 36656, Aug. 31, 1976, as amended at 53 FR 18057, May 19, 1988; 60 FR 38745, July 28, 1995]

§ 391.67 Farm vehicle drivers of articulated commercial motor vehicles.

The following rules in this part do not apply to a farm vehicle driver (as defined in §390.5) who is 18 years of age or older and who drives an articulated commercial motor vehicle:

- (a) Section 391.11(b)(1), (b)(8), (b)(10), and (b)(11) (relating to driver qualifications in general);
- (b) Subpart C (relating to disclosure of, investigation into, and inquiries about the background, character, and driving record of, drivers);
- (c) Subpart D (relating to road tests);
- (d) Subpart F (relating to maintenance of files and records).

[59 FR 60324, Nov. 23, 1994, as amended at 60 FR 38745, 38746, July 28, 1995]

§ 391.68 Private motor carrier of passengers (nonbusiness).

The following rules in this part do not apply to a private motor carrier of passengers (nonbusiness) and their drivers:

- (a) Section 391.11 (b)(8), (b)(10), and (b)(11), (relating to driver qualifications in general).
- (b) Subpart C (relating to disclosure of, investigation into, and inquiries about the background, character, and driving record of, drivers).
 - (c) Subpart D (relating to road tests).
- (d) So much of §§ 391.41 and 391.45 as require a driver to be medically examined and to have a medical examiner's certificate on his/her person.
- (e) Subpart F (relating to maintenance of files and records).
- (f) Subpart H (relating to controlled substances testing).

[60 FR 38746, July 28, 1995]

§391.69 Drivers operating in Hawaii.

The provisions of §391.21 (relating to application for employment), §391.23 (relating to investigations and inquiries), and §391.31 (relating to road tests) do not apply to a driver who has been a regularly employed driver (as defined in §390.5 of this subchapter) of a motor carrier operating in the State of Hawaii for a continuous period which began before April 1, 1975, as long as he/ she continues to be a regularly employed driver of that motor carrier. Such a driver is qualified to drive a commercial motor vehicle if he/she fulfills the requirements of paragraphs (b)(1) through (b)(9) of §391.11 (relating to qualifications of drivers).

[59 FR 60324, Nov. 23, 1994, as amended at 60 FR 38745, July 28, 1995]

§ 391.71 Intrastate drivers of commercial motor vehicles transporting Class 3 combustible liquids.

(a) The provisions of §391.11(b)(1) (relating to minimum age), §391.21 (relating to application for employment), §391.23 (relating to investigations and inquiries), and §391.31 (relating to road test) do not apply to a driver who is otherwise qualified and was a regularly employed driver (as defined in §390.5 of the subchapter) as of July 1, 1975, and continues to be a regularly employed driver of that motor carrier and who drives a commercial motor vehicle that:

- (1) Is transporting Class 3 combustible liquids (as defined in §173.120 of this title), and
- (2) Is being operated in intrastate commerce.
- (b) In addition to the exemptions provided in paragraph (a) of this section, the provisions of §391.41(b) (10) (relating to minimum visual requirements), do not apply to a driver who was a regularly employed driver (as defined in §390.5 of this subchapter) as of July 1, 1975, and continues to be a regularly employed driver of that motor carrier and who drives a commercial motor vehicle that:
- (1) Is a truck (as defined in §390.5 of this subchapter), and
- (2) Is operated in retail delivery service, and
- (3) Is transporting a Class 3 combustible liquid (as defined in §173.120 of this title), and
- (4) Is operated in intrastate commerce.

[40 FR 54796, Nov. 26, 1975; 40 FR 58858, Dec. 19, 1975, as amended at 53 FR 18057, May 19, 1988; 59 FR 60324, Nov. 23, 1994; 59 FR 63924, Dec. 12, 1994; 60 FR 38745, 38746, July 28, 1995]

§ 391.73 Private motor carrier of passengers (business).

The provisions of §391.21 (relating to applications for employment), §391.23 (relating to investigations and inquiries), and §391.31 (relating to road tests) do not apply to a driver who has been a regularly employed driver (as defined in §390.5 of this subchapter) of a private motor carrier of passengers (business) as of July 1, 1994, so long as the driver continues to be a regularly employed driver of that motor carrier.

Such a driver is qualified to drive a commercial motor vehicle if that driver fulfills the requirements of paragraphs (b)(1) through (b)(9) of §391.11 (relating to qualifications of drivers).

[59 FR 60324, Nov. 23, 1994, as amended at 60 FR 38745, July 28, 1995]

Subpart H—Controlled Substances Testing

SOURCE: 53 FR 47151, Nov. 21, 1988, unless otherwise noted.

§391.81 Purpose and scope.

- (a) The purpose of this subpart is to reduce highway accidents that result from driver use of controlled substances, thereby reducing fatalities, injuries, and property damage.
- (b) This subpart prescribes minimum Federal safety standards to detect and deter the use of controlled substances as defined in 49 CFR part 40 (marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP)).
- (c) As part of reasonable cause drug testing programs established pursuant to this subpart, motor carriers may test for drugs in addition to those specified in this part only with approval granted by the Federal Highway Administrator under 49 CFR part 40 and for substances for which the Department of Health and Human Services has established an approved testing protocol and positive threshold.

§391.83 Applicability.

- (a) Except for a private motor carrier of passengers (nonbusiness), this subpart applies to motor carriers and persons who operate a commercial motor vehicle as defined in this subpart in interstate commerce and are subject to the driver qualification requirements of part 391 of this subchapter.
- (b) This subpart shall not apply to any person for whom compliance with this subpart would violate the domestic laws or policies of another country.
- (c) This subpart is not applicable with respect to any foreign-based employee of a foreign-domiciled motor carrier.

[53 FR 47151, Nov. 21, 1988, as amended at 59 FR 8753, Feb. 23, 1994; 60 FR 56, Jan. 3, 1995]

§391.85 Definitions.

As used in this subpart—

Collection site means a place where individuals present themselves for the purpose of providing body fluid or tissue samples to be analyzed for specified controlled substances. The site must possess all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and transportation or shipment of the samples to a laboratory.

Commercial motor vehicle means any self-propelled or towed motor vehicle used on public highways in interstate commerce to transport passengers or property when:

(a) The motor vehicle has a gross vehicle weight rating or gross combination weight rating of 11,794 or more kilograms (26,001 or more pounds); or

(b) The motor vehicle is designed to transport more than 15 passengers, including the driver; or

(c) The motor vehicle is used in the transportation of hazardous materials in a quantity requiring placarding under regulations issued by the Secretary under the Hazardous Materials Transportation Act (49 U.S.C. 5101 et.

Controlled substances has the meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR part 1308).

Drug means any substance (other than alcohol) that is a controlled substance as defined in this section and 49 CFR part 40.

FHWA means the Federal Highway Administration, U.S. Department of Transportation.

Interstate commerce means trade, traffic, or transportation in the United States which is between a place in a State and a place outside of such State (including a place outside of the United States) or is between two places in a State through another State or a place outside of the United States.

Medical practitioner means a licensed doctor of medicine (MD) or osteopathy (DO) or a doctor of dental surgery (DDS) authorized to practice by the State in which the person practices.

Medical Review Officer means a licensed doctor of medicine or osteopathy with knowledge of drug abuse disorders that is employed or used by a motor carrier to conduct drug testing in accordance with this part.

Motor carrier means a for-hire motor carrier or a private motor carrier of property. The term "motor carrier" includes a motor carrier's agents, officers and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories. For purposes of subchapter B, the definition of "motor carrier" includes the terms "employer" and "exempt motor carrier."

Non-suspicion-based post-accident testing means testing of a commercial motor vehicle driver after an accident, as defined in §390.5 of this subchapter:

- (1) If the driver of the commercial motor vehicle receives a citation for a moving traffic violation arising from the accident, as required by §391.113 of this subpart; and
- (2) Without regard to whether there is any reasonable suspicion of drug usage, reasonable cause to believe the driver has been operating the commercial motor vehicle while under the influence of drugs, or reasonable cause to believe the driver was at fault in the accident and drug usage may have been a factor.

Random selection process means that drug tests are unannounced and that every commercial motor vehicle driver of a motor carrier has an equal chance of being selected for testing.

Reasonable cause means that the motor carrier believes the actions or appearance or conduct of a commercial motor vehicle driver, on duty as defined in §395.2 of this subchapter, are indicative of the use of a controlled substance.

[53 FR 47151, Nov. 21, 1988, as amended at 55 FR 3555, Feb. 1, 1990; 56 FR 40809, Aug. 16, 1991; 58 FR 33777, June 21, 1993; 60 FR 38746, July 28, 1995; 61 FR 9567, Mar. 8, 1996]

§ 391.87 Notification of test results and recordkeeping.

(a) The MRO shall report to the motor carrier whether a driver's test

was positive or negative and, if positive, the identity of the controlled substance for which the test was positive.

- (b) A motor carrier shall notify its driver or driver-applicant of the results of a controlled substance test conducted under this subpart.
 - (c) A motor carrier shall notify-
- (1) A driver-applicant of the results of a pre-employment controlled substance test conducted under this subpart provided the driver-applicant requests such results within 60 days of being notified of the disposition of the employment application; or
- (2) A driver of the results of a periodic, random, reasonable cause, or post-accident test conducted under this subpart, provided the results were positive. The driver must also be advised of what controlled substance was identified in any positive test.
- (d) A motor carrier shall ensure that all records related to the administration and results of the drug testing program for its drivers subject to the testing requirements are maintained for a minimum period of 5 years except that individual negative test results shall be maintained for a minimum of 12 months.
- (e) A medical review officer shall be the sole custodian of individuals test results. The medical review officer shall retain the reports of individual test results for a minimum of 5 years.
- (f) A motor carrier shall retain in the driver's qualification file such information that will indicate only the following:
- (1) The types of controlled substances testing for which the driver submitted a urine specimen.
 - (2) The date of such collection.
 - (3) The location of such collection.
 - (4) The identity of person or entity:
 - (i) Performing the collection,
 - (ii) Analysis of the specimens, and
 - (iii) Serving as the MRO.
- (5) Whether the test finding was "positive" or "negative" and, if "positive," the controlled substances identified in any positive test.
- (g) A motor carrier shall produce upon demand and shall permit the Federal Highway Administrator to examine all records related to the administration and results of controlled sub-

stance testing performed under this part.

- (h) A motor carrier shall maintain all administrative records pertaining to its controlled substances testing program and an annual calendar year summary of the results of its controlled substances testing program performed under this subpart.
- (1) The administrative records shall include agreements with collection facilities, laboratories, MROs, consortia, names and positions of company officials and their role in the motor carrier's controlled substances testing program, quarterly laboratory summaries, recordkeeping and testing procedures including random testing selection and notification procedures.
- (2) The motor carrier's summary shall include the following information:
- (i) Number of drivers subject to subpart H;
- (ii) Number of drivers subject to testing under the anti-drug rules of more than one DOT agency, identified by each agency;
- (iii) Number of specimens collected by type of test (e.g., pre-employment, random, reasonable cause/suspicion, post-accident);
- (iv) Number of positives verified by a MRO by type of test, type of controlled substance;
- (v) Number of negatives verified by a MRO by type of test;
- (vi) Number of persons denied a position as a driver following a verified controlled substances test;
- (vii) Number of drivers verified positive by a MRO who were returned to duty as a driver during the reporting period:
- (viii) Number of drivers with tests verified positive by a MRO for multiple controlled substances;
- (ix) Number of drivers who refused to submit to a controlled substances test required under this subpart; and
- (x) Number of supervisors who have received required training during the reporting period.
- (3) A motor carrier shall prepare and maintain a summary of the results of its alcohol and controlled substances testing programs performed under this part during the previous calendar year, when requested by the Secretary of

Transportation, any DOT agency, or any State or local officials with regulatory authority over the motor carrier or any of its drivers. The information shall be made available for inspection at the motor carrier's principal place of business within two business days of the request.

(4) If, during the month of January, a motor carrier is provided with forms by the Federal Highway Administration on which to report the motor carrier's annual calendar year summary information, the motor carrier shall complete the forms and submit them to the . Federal Highway Administration by March 15 of that year. The motor carrier shall ensure that the annual summary report is accurate and received by March 15 at the location that the Federal Highway Administration specifies in its request. The report shall be in the form and manner prescribed by the Federal Highway Administration in its request. When the report is submitted to the Federal Highway Administration by mail or electronic transmission, the information requested shall be typed, except for the signature of the certifying official. Each motor carrier shall ensure the accuracy and timeliness of each report submitted by the motor carrier or a consortium.

(Approved by the Office of Management and Budget under control number 2125–0543)

[53 FR 47151, Nov. 21, 1988, as amended at 55 FR 3555, Feb. 1, 1990; 58 FR 68222, Dec. 23, 1993; 59 FR 49586, Sept. 29, 1994; 60 FR 13370, Mar. 13, 1995]

§391.89 Access to individual test results or test findings.

(a) No person may obtain the individual test results retained by a medical review officer, and no medical review officer shall release the individual test results of any employee to any person, without first obtaining written authorization from the tested employee. Nothing in this paragraph shall prohibit a medical review officer from releasing, to the employing motor carrier, the information delineated in § 391.87(f) of this subpart.

(b) No person may obtain the information delineated in §391.87(f) of this part and retained by a motor carrier, and no motor carrier shall release such information about any employee or

previous employee, without first obtaining written authorization from the tested employee.

[58 FR 33777, June 21, 1993]

§391.93 Implementation schedule.

- (a) All motor carriers shall have a drug testing program that conforms to this subpart and 49 CFR part 40 by the date a motor carrier begins motor carrier operations.
- (b) All motor carriers shall require all collection personnel to implement the split sample collection procedures required under §40.25(f)(10) of this title by August 15, 1994.
- (c) An employer may begin complying with the requirements of paragraph (b) of this section on or after March 17,

[59 FR 7514, Feb. 15, 1994]

§391.95 Drug use prohibitions.

- (a) No driver shall be on duty, as defined in §395.2 of this subchapter, if the driver uses any controlled substances, except as provided in §391.97 of this part.
- (b) No driver shall be on duty, as defined in §395.2 of this subchapter, if the driver tests positive for use of controlled substances, except as provided in §391.97 of this part.
- (c) A person who tests positive for the use of a controlled substance, as defined in 49 CFR part 40, is medically unqualified to operate a commercial motor vehicle.
- (d) A person who refuses to be tested under provisions of this subpart shall not be permitted to operate a commercial motor vehicle. Such refusal shall be treated as a positive test and subject the driver to the restrictions contained in paragraph (c) of this section.

§391.97 Prescribed drugs.

(a) Affirmative defense. Any driver who is alleged to have violated §391.95 of this subpart shall have available as an affirmative defense, to be proven by the driver through clear and convincing evidence, that his/her use of a controlled substance (except for methadone) was prescribed by a licensed medical practitioner who is familiar with the driver's medical history and assigned duties.

- (b) The MRO shall afford a tested individual the opportunity to discuss a positive test result with the MRO before reporting the positive test result to the motor carrier. If an MRO, after making and documenting all reasonable efforts is unable to contact a tested person, the MRO shall contact a designated management official of the motor carrier to arrange for the individual to contact the MRO prior to going on duty. The MRO may verify a positive test without having communicated with the driver about the results of the test if:
- (1) The driver expressly declines the opportunity to discuss the results of the test, or
- (2) Within 5 days after a documented contact by a designated management official of the motor carrier instructing the driver to contact the MRO, the driver has not done so.
- (c) All positive tests reported to the motor carrier by the MRO in which the MRO did not discuss the results with the driver shall be so noted and be accompanied by complete documentation of the MRO's efforts to contact the driver including contacts with a motor carrier's designated management official.
- (d) The rules in this subpart do not prohibit a motor carrier from requiring a driver to notify the motor carrier of thereapeutic drug use.

 $[53\ FR\ 47151,\ Nov.\ 21,\ 1988,\ as\ amended\ at\ 55\ FR\ 3555,\ Feb.\ 1,\ 1990]$

§391.99 Reasonable cause testing requirements.

- (a) A motor carrier shall require a driver to be tested, upon reasonable cause, for the use of controlled substances.
- (b) A driver shall submit to testing, upon reasonable cause, for the use of controlled substances when requested to do so by the motor carrier.
- (c) The conduct must be witnessed by at least two supervisors or company officials, if feasible. If not feasible, only one supervisor or company official need witness the conduct. The witness or witnesses must have received training in the identification of actions, appearance, or conduct of a commercial motor vehicle driver which are indic-

ative of the use of a controlled substance.

(d) The documentation of the driver's conduct shall be prepared and signed by the witnesses within 24 hours of the observed behavior or before the results of the tests are released, whichever is earlier.

[53 FR 47151, Nov. 21, 1988, as amended at 55 FR 3556, Feb. 1, 1990]

§ 391.101 Reasonable cause testing procedures.

- (a) A motor carrier shall ensure that the driver is transported immediately to a collection site for the collection of a urine sample.
- (b) A motor carrier shall ensure that the test performed under the requirements of §391.99 of this subpart conforms with 49 CFR part 40 and this subpart.

[53 FR 47151, Nov. 21, 1988, as amended at 55 FR 3556, Feb. 1, 1990]

§ 391.103 Pre-employment testing requirements.

- (a) A motor carrier shall require a driver-applicant who the motor carrier intends to hire or use to be tested for the use of controlled substances as a prequalification condition.
- (b) A driver-applicant shall submit to controlled substance testing as a prequalification condition.
- (c) Prior to collection of a urine sample under §391.107 of this subpart, a driver-applicant shall be notified that the sample will be tested for the presence of controlled substances.
- (d) Exceptions. (1) A motor carrier may use a driver who is a regularly employed driver of another motor carrier without complying with paragraph (a) of this section, if the driver meets the requirement of §391.65 of this subchapter.
- (2) A motor carrier may use a driver who is not tested by the motor carrier without complying with paragraph (a) of this section, provided the motor carrier assures itself:
- (i) That the driver has participated in a drug testing program that meets the requirements of this subpart within the previous 30 days and,
- (ii) While participating in that program, was either

- (A) Tested for controlled substances within the past 6 months (from the date of application with the motor carrier) or
- (B) Participated in the drug testing program for the previous 12 months (from the date of application with the motor carrier).
- (3) A motor carrier who exercises either paragraph (d)(1) or (d)(2) of this section shall contact the controlled substances testing program in which the driver participates or participated and shall obtain the following information:
- (i) Name and address of the program.(ii) Verification that the driver participates or participated in the pro-

gram.
(iii) Verification that the program

conforms to 49 CFR part 40.

- (iv) Verification that the driver is qualified under the rules of this part, including that the driver has not refused to be tested for controlled substances
- (v) The date the driver was last tested for controlled substances.
- (vi) The results, positive or negative, of any test taken.
- (4) The motor carrier shall retain the information required by this paragraph in the driver's qualification file required under §391.51 of this part.
- (5) A motor carrier who uses, but does not employ, such a driver more than once a year must assure itself once every 6 months that the driver participates in a controlled substances testing program that meets the requirements of this subpart.

[53 FR 47151, Nov. 21, 1988, as amended at 55 FR 3556, Feb. 1, 1990]

§ 391.105 Biennial (periodic) testing requirements.

- (a) A motor carrier shall require a driver to be tested in accordance with the procedures set forth in this subpart and part 40 of this title at least once every two years commencing with the driver's first medical examination required under §391.45 of this part after the motor carrier's implementation of a drug testing program in accordance with this subpart.
- (b) *Exception.* A motor carrier may use a driver who participates in a drug testing program of another motor car-

rier or controlled substance test consortium.

- (c) *Exceptions*. A motor carrier may discontinue periodic testing after a driver has been tested at least once under
- (1) The requirements of paragraph (a) of this section;
- (2) The requirements of §391.103 of this subpart; or
- (3) The requirements of §391.109 of this subpart, and the motor carrier is testing its drivers at a 50 percent rate under its random testing program as required by §391.109 of this subpart.

[53 FR 47151, Nov. 21, 1988, as amended at 55 FR 3556, Feb. 1, 1990]

§391.107 Pre-employment and biennial testing procedures.

- (a) The sample shall consist of a urine specimen.
- (b) A motor carrier shall ensure that the test preformed under the requirements of §391.105 of this subpart conforms with 49 CFR part 40 and this subpart.

[53 FR 47151, Nov. 21, 1988, as amended at 55 FR 3556, Feb. 1, 1990]

§ 391.109 Random testing requirements.

- (a) The number of tests conducted under this section annually shall equal or exceed 50 percent (50%) of the average number of commercial motor vehicle driver positions for which testing is required to be tested under this subpart.
- (b) A motor carrier shall use a random selection process to select and request a driver to be tested for the use of controlled substances.
- (c) A driver shall submit to controlled substance testing when selected by a random selection process used by a motor carrier.
- (d) Exception. A motor carrier may use the results of another's controlled substances testing program that a driver participates in to meet the requirements of this section provided that the motor carrier obtains the following information from the controlled substances testing program entity:
 - (1) Name and address of the program.
- (2) Verification that the driver participates in the program.

- (3) Verification that program conforms to the 49 CFR part 40.
- (4) Verification that driver is qualified under the rules of this part, including that the driver has not refused to be tested for controlled substances.
- (5) The date the driver was last tested for controlled substances.
- (6) The results, positive or negative, of any tests taken.

[53 FR 47151, Nov. 21, 1988, as amended at 55 FR 3556, Feb. 1, 1990]

§391.111 Random testing procedures.

- (a) The sample shall consist of a urine specimen.
- (b) A motor carrier shall ensure that the test performed under the requirements of §391.109 of this subpart conforms with 49 CFR part 40 and this subpart.

[53 FR 47151, Nov. 21, 1988, as amended at 55 FR 3556, Feb. 1, 1990]

§391.113 Post-accident testing requirements.

- (a) A driver shall provide a urine sample to be tested for the use of controlled substances as soon as possible, but not later than 32 hours, after an accident, as defined in §390.5 of this subchapter, if the driver of the commercial motor vehicle receives a citation for a moving traffic violation arising from the accident.
- (b) A driver who is seriously injured and cannot provide a specimen at the time of the accident shall provide the necessary authorization for obtaining hospital reports and other documents that would indicate whether there were any controlled substances in his/her system.
- (c) A motor carrier shall provide drivers with necessary information and procedures so that the driver will be able to meet the requirement of paragraph (a) of this section.

[53 FR 47151, Nov. 21, 1988, as amended at 55 FR 3556, Feb. 1, 1990; 58 FR 33777, June 21, 1993]

§391.115 Post-accident testing procedures.

- (a) The sample shall consist of a urine specimen.
- (b) A driver shall ensure that a specimen is collected and forwarded to a Na-

- tional Institute on Drug Abuse (NIDA) certified laboratory in a manner which conforms to 49 CFR part 40.
- (c) A motor carrier shall ensure that the test performed under the requirements of §391.113 of this subpart conforms with 49 CFR part 40 and this subpart.

[53 FR 47151, Nov. 21, 1988, as amended at 55 FR 3557, Feb. 1, 1990]

§391.117 Disqualification.

- (a) Disqualification for refusal. Except for a driver who meets the conditions of §391.113(b), a driver shall be disqualified by issuance of a letter of disqualification for a period of 1 year following a refusal to give a urine sample when the driver has been involved in a fatal accident.
- (b) Disqualification for use of controlled substances. A driver shall be disqualified by issuance of a letter of disqualification for a period of 1 year for a positive test of controlled substance use when the driver has been involved in a fatal accident.

§ 391.119 Employee Assistance Program (EAP).

- (a) Every motor carrier shall establish an EAP program. The EAP program shall, as a minimum, include—
- (1) An educational and training component for drivers which addresses controlled substances;
- (2) An education and training component for supervisory personnel and company officials which addresses controlled substances; and
- (3) A written statement, on file and available for inspection, at the motor carrier's principal place of business, outlining the motor carrier's EAP.
- (b) [Reserved]

[53 FR 47151, Nov. 21, 1988, as amended at 55 FR 3557, Feb. 1, 1990]

§391.121 EAP training program.

- (a) Each EAP shall consist of an effective training program for the motor carrier's supervisory personnel and all drivers.
- (b) The training program must include at least the following elements:
- (1) The effects and consequences of controlled substance use on personal

health, safety, and the work environment;

- (2) The manifestations and behavioral changes that may indicate controlled substance use or abuse; and
- (3) Documentation of training given to drivers and motor carrier supervisory personnel.
- (c) EAP training programs for all drivers and supervisory personnel must consist of at least 60 minutes of train-

[53 FR 47151, Nov. 21, 1988, as amended at 55 FR 3557, Feb. 1, 1990]

§391.123 After-care monitoring.

After returning to work, drivers who test positive must continue in any after-care program and be subject to follow-up testing for not longer than 60 months following return to work.

§391.125 Termination schedule of this subpart.

- (a) All motor carriers shall retain all records generated in connection with this subpart as required by §382.401 of this subchapter.
- (b) Large employers. Except as provided in paragraph (a) of this section, each motor carrier with fifty or more drivers on March 17, 1994, shall terminate compliance with this subpart and shall implement the requirements of part 382 of this subchapter beginning on January 1, 1995.
- (c) Small employers. Except as provided in paragraph (a) of this section, each motor carrier with fewer than fifty drivers on March 17, 1994, shall terminate compliance with this subpart and shall implement the requirements of Part 382 of this subchapter beginning on January 1, 1996.
- (d) Except as provided in paragraph (a) of this section, all motor carriers shall terminate compliance with this subpart on January 1, 1996.

[61 FR 9567, Mar. 8, 1996]

PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES

Subpart A—General

Sec.

392.1 Scope of the rules in this part.

392.2 Applicable operating rules.

392.3 Ill or fatigued operator.

392.4 Drugs and other substances.

392.5 Alcohol prohibition.

392.6 Schedules to conform with speed lim-

392.7 Equipment, inspection and use.

392.8 Emergency equipment, inspection, and

392.9 Safe loading.

392.9a [Reserved]

392.9b Hearing aid to be worn.

Subpart B—Driving of Commercial Motor Vehicles

392.10 Railroad grade crossings; stopping re-

392.11 Railroad grade crossings; slowing down required.

392.12 [Reserved]

392.13 Drawbridges; slowing down of commercial motor vehicles.

392.14 Hazardous conditions; extreme caution.

392.15 Required and prohibited use of turn signals.

392.16 Use of seat belts.

392.18 [Reserved]

Subpart C—Stopped Commercial Motor Vehicles

392.20 Unattended commercial motor vehicles: precautions.

392.21 [Reserved] 392.22 Emergency signals; stopped commercial motor vehicles.

392.24 Emergency signals; flame-producing. 392.25 Emergency signals; dangerous car-

Subpart D-Use of Lighted Lamps and Reflectors

392.30—392.32 [Reserved]

392.33 Obscured lamps or reflectors.

Subpart E-License Revocation; Duties of Driver

392.40—392.41 [Reserved]

392.42 Notification of license revocation.

Subpart F—Fueling Precautions

392.50 Ignition of fuel; prevention.

Reserve fuel.

392.52 Buses; fueling.

Subpart G—Prohibited Practices

392.60 Unauthorized persons not to be transported.

392.61—392.62 [Reserved]

392.63 Towing or pushing loaded buses.

392.64 Riding within closed commercial motor vehicles without proper exits.

392.65 [Reserved]